

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of :)	
)	
Paul Gaudino Family Fitness Show)	
)	CSR 6257
Video Programming Accessibility)	
)	
Petition for Waiver of Closed Captioning)	
Requirements)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: July 30, 2004

Released: August 2, 2004

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. In this Order, we address a petition for exemption from Section 79.1 of the Commission's rules,¹ implementing Section 713 of the Communications Act of 1934, as amended (the "Act"),² filed by the television program The Paul Gaudino Family Fitness Show ("Gaudino") aired on WPCB in Pittsburgh, Pennsylvania. Telecommunications for the Deaf, Inc. ("TDI") filed an opposition to the petition for exemption.³ For the reasons discussed below, Gaudino's petition is denied, to the extent stated herein.

2. In *Implementation of Section 305 of the Telecommunications Act of 1996 – Video Programming Accessibility*, the Commission established rules and implementation schedules for the closed captioning of video programming.⁴ In enacting Section 713, Congress recognized that, in certain limited situations, the costs of captioning might impose an undue burden on video programming providers or owners, and it authorized the Commission to adopt appropriate exemptions.⁵ Congress defined "undue burden" to mean "significant difficulty or expense."⁶ When determining if the closed captioning requirements will impose an undue burden, the statute requires the Commission to consider the following factors: (1) the nature and cost of the closed captions for the programming; (2) the impact on the operation of the provider or program owner; (3) the financial resources of the provider or program owner;

¹ 47 C.F.R. § 79.1.

² 47 U.S.C. § 613.

³ TDI argues that grant of an exemption from the closed captioning rules is not warranted because Petitioner has not provided sufficient evidence to demonstrate that an exemption is warranted under the four statutory exemption factors.

⁴ *Implementation of Section 305 of the Telecommunications Act of 1996 - Video Programming Accessibility*, 13 FCC Rcd 3272 (1997) ("Report and Order").

⁵ 47 U.S.C. § 613(d)(1).

⁶ 47 U.S.C. § 613(e).

and (4) the type of operations of the provider or program owner.⁷ A petition for exemption must be supported by sufficient evidence to demonstrate that compliance with the requirements to close caption video programming would cause an undue burden.⁸ Petitioners also are instructed to submit any other information they deem appropriate and relevant to the Commission's final determination.⁹

II. DISCUSSION

3. Gaudino submitted a petition for exemption requesting a waiver from compliance with the captioning requirements. Gaudino's petition, however, fails to disclose information regarding its finances and assets, gross or net proceeds, or possible sponsorships solicited for assisting in captioning. Gaudino provided no documentation from which its financial condition can be assessed. Without such documentation, it is impossible for the Commission to determine whether Gaudino has sufficient justification supporting an exemption from the closed captioning requirements. Our decision herein is without prejudice to Gaudino bringing a future petition for exemption that adequately documents that compliance with our rules will impose an undue burden. Implicit in the Section 79.1(f) requirement of a showing as to the financial resources of a petitioner, such as Gaudino, is the question of the extent to which the distributors of its programming can be called upon to contribute towards the captioning expense. Thus, any subsequent petition should document whether Gaudino solicited captioning assistance from the distributors of its programming and the response to these solicitations. Absent such a petition, petitioner is given 3 months from the release date of this *Order* to come into complete compliance with the rules.

III. ORDERING CLAUSE

4. Accordingly, **IT IS ORDERED** that the petition for exemption from the closed captioning requirements of Section 79.1 of the Commission's rules **IS DENIED**. Petitioner must comply with the captioning requirements within 3 months from the release date of this *Order*.

5. This action is taken under delegated authority pursuant to Section 0.283 of the Commission's rules.¹⁰

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broecker
Deputy Chief, Policy Division
Media Bureau

⁷ *Id.*; see also 47 C.F.R. § 79.1(f).

⁸ 47 C.F.R. § 79.1(f)(2).

⁹ 47 C.F.R. § 79.1(f)(3).

¹⁰ 47 C.F.R. § 0.283.